

between a place in . . . a State and a place in another State." 49 U.S.C. §13501. As PTC ACCESS drivers, Appellees transport individuals from locations within Pennsylvania to other locations within Pennsylvania, without crossing state lines. They do not transport passengers "between a place in . . . a State and a place in another State." *Id.* Thus, the Secretary of Transportation has no power to establish Appellees' qualifications and maximum hours. *Id.* Absent this power, the Motor Carriers Act exemption does not apply and PTC must comply with the Fair Labor Standard Act's overtime pay rules. See, 29 U.S.C. §213(b)(1).

418 F.3d at 259.

The statutory bases of federal jurisdiction are significantly different between these two federal statutes. Accordingly, the Third Circuit's decision has absolutely no impact on the application of the Americans With Disabilities Act.

### **III. THE THIRD CIRCUIT'S DECISION DOES NOT CONFLICT WITH RELEVANT DECISIONS OF THIS COURT OR PRIOR THIRD CIRCUIT PRECEDENT**

The Court below specifically applied this Court's analysis in *United States v. Yellow Cab, supra*, to the facts in this case. The Court stated:

The Court's application of this approach in *Yellow Cab* is instructive. The Court considered two types of taxi service, both involving taxi transportation of passengers immediately before or after an interstate railroad trip. The first type of service, provided under contracts with the railroads, involved

carrying passengers between two railroad stations, in order for them immediately to continue their interstate travels. The Court found that taxis providing this service were "clearly a part of the stream of interstate commerce." *Id.* at 228, 67 S.Ct. 1560. Viewing the intrastate portion of the journey, the shuttling between railroad stations - "in its relations to the entire journey rather than in isolation", the Court found that it was "an integral step in the interstate movement." *Id.* at 229, 67 S.Ct. 1560.

However, the Court found that taxis providing the second type of taxi service, which merely involved carrying passengers between the railroad stations and their homes, offices, or hotels were not engaged in interstate commerce. *Id.* at 230, 67 S.Ct. 1560. "To the taxicab driver, [such a trip to the railroad station was] just another local fare." *Id.* at 232, 67 S.Ct. 1560. Those providing the service had "no contractual or other arrangement with the interstate railroads," nor any joint collection or payment of fares. According to the Court, "their relationship to interstate transit [wa]s only casual and incidental." *Id.* at 231, 67 S.Ct. 1560. The Court found, and we agree today, that "[t]he common understanding is that a traveler intending to make an interstate rail journey begins his interstate movement when he boards the train at the station and that his journey ends when he disembarks at the station in the city of destination." *Id.* at 231, 67 S.Ct. 1560. Thus, "[w]hat happens prior or subsequent to that rail journey, at least in the absence of some special arrangement, is not a constituent part of the interstate movement." *Id.* at 232, 67 S.Ct. 1560.

The Court below also expressly distinguished this case from its prior decision in *Sutherland v. St. Croix Taxicab Association*, 315 F.2d 364 (3d Cir. 1963). The Court stated:

Unlike in *Sutherland*, the ACCESS drivers' services are not arranged as part of their passengers' interstate travels through a prepackaged tour, or linked in any other way. Even where certain of ACCESS passengers' travels will eventually carry them out of the state, the ACCESS service itself is purely intrastate.

Accordingly, we conclude that there is no "practical continuity of movement," in connection with the ACCESS drivers' services. Hence, the MCA exemption does not apply.

418 F.3d at 258.

Rather than conflicting with *Yellow Cab* and *Sutherland*, the Court below analyzed the reasoning in both cases and properly concluded that the facts in the instant case demonstrate that there is no "practical continuity of movement" in connection with the ACCESS drivers' services.

The Court expressly found:

In this case, as we have stated, there is no evidence of any arrangement between PTC and the other carriers, thus rendering the MCA exemption inapplicable to the ACCESS drivers.

(Court's emphasis); *Id.*

#### IV. THE THIRD CIRCUIT DID NOT IGNORE THE PLAIN LANGUAGE OF THE MOTOR CARRIERS ACT AND DEPARTMENT OF TRANSPORTATION REGULATIONS

PTC misstates the applicable language of the Motor Carriers Act at page 19 of the Petition. The Act does not apply to any "motor carrier on a public highway."

The Motor Carriers Act's jurisdictional provision is set forth in 49 U.S.C. §13501. As stated by Judge Nygaard in his concurring Opinion:

That statute gives the Secretary of Transportation the authority to establish qualifications and maximum hours for employees of a motor carrier – thereby triggering the Motor Carriers Act exemption – only "to the extent that passengers, property, or both, are transported by motor carrier . . . between a place in . . . a State and a place in another State." 49 U.S.C. §13501. As PTC ACCESS drivers, Appellees transport individuals from locations within Pennsylvania to other locations within Pennsylvania, without crossing state lines. They do not transport passengers "between a place in . . . a State and a place in another State." *Id.* Thus, the Secretary of Transportation has no power to establish Appellees' qualifications and maximum hours. *Id.* Absent this power, the Motor Carriers Act exemption does not apply and PTC must comply with the Fair Labor Standard Act's overtime pay rules. See, 29 U.S.C. §213(b)(1).

418 F.3d at 259.

The Department of Transportation Regulations do not provide any guidance on this issue. The Regulations do not

explain what type of intrastate activity can become part of an interstate journey.

The Court below properly construed the Motor Carriers Act and the Departmental Regulations.

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**CONCLUSION**

The Petition for Writ of Certiorari should be denied.

Respectfully submitted,

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